

A-Engrossed
House Bill 4058

Ordered by the House February 15
Including House Amendments dated February 15

Sponsored by Representatives RESCHKE, SALINAS, STARK; Representatives BARKER, DOHERTY, EVANS, GOMBERG, HOLVEY, MARSH, MCKEOWN, MEEK, NEARMAN, NOBLE, OLSON, PILUSO, Senators BEYER, DEMBROW, GELSER, JOHNSON, KNOPP, MANNING JR, ROBLAN, TAYLOR (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Removes requirement that nonprofit corporation meet certain requirements for at least five years before filing application for issuance of labor contractor license.]

[Exempts property services contractors from requirement to submit payroll records to Commissioner of the Bureau of Labor and Industries.]

Modifies definition of "property services contractor" for purposes of employment law.

Allows Commissioner of the Bureau of Labor and Industries to issue license to business entity or private nonprofit corporation provided that certain requirements are met.

Exempts labor contractor subject to employee indorsement who is employee of property services contractor from providing personal information to Bureau of Labor and Industries.

Clarifies requirements for satisfactory proof of insurance for property services contractors.

Permits bureau to establish process for administering examination for property services contractor license online.

Specifies time frame in which property services contractor shall provide training to certain employees.

Requires property services contractor to provide time and pay records to commissioner or employee of property services contractor within 45 days of request for records.

Permits person to bring civil action against property services contractor on or after July 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to requirements for labor contractors; creating new provisions; amending ORS 658.405,
3 658.410, 658.411, 658.412, 658.415, 658.428, 658.440 and 658.501; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 658.405 is amended to read:

6 658.405. As used in ORS 658.405 to 658.503 and 658.991 (2) and (3), unless the context requires
7 otherwise:

8 (1) "Agricultural association" means a nonprofit or cooperative association of farmers, growers
9 or ranchers that is incorporated under applicable state law and that acts as a farm labor contractor
10 solely on behalf of members of the association.

11 (2)(a) "Construction labor contractor" includes any person that:

12 (A) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers
13 to perform labor for another in construction;

14 (B) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers
15 on behalf of an employer engaged in construction; or

16 (C) Enters into a subcontract with another for any of the activities described in subparagraph

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (A) or (B) of this paragraph.

2 (b) "Construction labor contractor" does not include:

3 (A) A person that has a construction contract with an owner of real property where the con-
4 struction work is performed;

5 (B) A person that has obtained building permits to perform construction work;

6 (C) A person that supplies building materials or machinery, other than manual tools or hand-
7 operated power tools, for a construction project;

8 (D) An owner of real property engaged in the solicitation or recruitment of persons to perform
9 construction work on the owner's property;

10 (E) The Employment Department;

11 (F) A crew leader;

12 (G) Individuals who perform labor pursuant to an agreement for exchanging their own labor or
13 services with each other, provided the work is performed on land owned or leased by the individuals;

14 (H) An educational institution that is recognized as such by the Department of Education;

15 (I) A labor union;

16 (J) A local joint apprenticeship committee formed under ORS 660.135; or

17 (K) A staffing agency whose primary purpose is to provide workers to the client employers of
18 the agency under the terms of a client agreement, if the agency provides workers' compensation
19 coverage for all employees as required by ORS chapter 656 and pays employment and income taxes
20 in accordance with applicable law.

21 (3) "Crew leader" means the member of a group of workers who acts as spokesman for the
22 group, travels with the group from another state into Oregon and performs the same work along
23 with other group members. A crew leader may transport workers from their local place of residence
24 to their place of employment so long as the crew leader does not perform this service for a profit.

25 (4)(a) "Farm labor contractor" includes any person that:

26 (A) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers
27 to perform labor for another person to work in forestation or reforestation of lands, including but
28 not limited to the planting, transplanting, tubing, precommercial thinning and thinning of trees and
29 seedlings, the clearing, piling and disposal of brush and slash and other related activities;

30 (B) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers
31 to perform labor for another person in the production or harvesting of farm products;

32 (C) Recruits, solicits, supplies or employs workers to gather evergreen boughs, yew bark, bear
33 grass, salal or ferns from public lands for sale or market prior to processing or manufacture;

34 (D) Recruits, solicits, supplies or employs workers on behalf of an employer engaged in these
35 activities;

36 (E) In connection with the recruitment or employment of workers to work in these activities,
37 furnishes board or lodging for such workers;

38 (F) Bids or submits prices on contract offers for those activities; or

39 (G) Enters into a subcontract with another for any of those activities.

40 (b) "Farm labor contractor" does not include:

41 (A) Farmers, including owners or lessees of land intended to be used for the production of tim-
42 ber, their permanent employees, advertising media, platoon leaders or individuals engaged in the
43 solicitation or recruitment of persons for dayhaul work in connection with the growing, production
44 or harvesting of farm products;

45 (B) The Employment Department;

1 (C) A crew leader;

2 (D) An individual who performs work, other than recruiting, supplying, soliciting or employing
3 workers to perform labor for another, alone or only with the assistance of the individual's spouse,
4 son, daughter, brother, sister, mother or father;

5 (E) Individuals who perform labor pursuant to an agreement for exchanging their own labor or
6 services with each other, provided the work is performed on land owned or leased by the individuals;

7 (F) An educational institution that is recognized as such by the Department of Education;

8 (G) A farmer who operates a farmworker camp, regulated under ORS 658.750, who recruits,
9 supplies, solicits or employs workers only for the farmer's own operations, and has farmworkers
10 living in the camp who are employed by another on no more than an incidental basis, and the farmer
11 receives no remuneration by virtue of such incidental employment; or

12 (H) A labor union.

13 (5) "Labor contractor" means a construction labor contractor, a farm labor contractor or a
14 property services contractor.

15 (6)(a) "Property services contractor" includes any person that:

16 (A) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers
17 to perform labor for another person to provide services that include janitorial services;

18 (B) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers
19 on behalf of an employer to provide services that include janitorial services; or

20 (C) Enters into a subcontract with another for any of the activities described in subparagraph
21 (A) or (B) of this paragraph.

22 (b) "Property services contractor" does not include:

23 (A) The Employment Department;

24 (B) [A *crew leader*] **Employees of a property services contractor who is licensed under ORS**
25 **658.405 to 658.503;**

26 (C) Individuals who perform labor pursuant to an agreement for exchanging their own labor or
27 services with each other, provided the work is performed on land owned or leased by the individuals;

28 (D) An educational institution that is recognized as such by the Department of Education; or

29 (E) A labor union.

30 **SECTION 2.** ORS 658.410 is amended to read:

31 658.410. (1) Except as provided by ORS 658.425 and subsection (3) of this section, a person may
32 not act as a labor contractor without a valid license in the person's possession issued to the person
33 by the Commissioner of the Bureau of Labor and Industries. Except as provided in subsection (3)
34 of this section, a person may not act as a farm labor contractor with regard to the forestation or
35 reforestation of lands unless the person possesses a valid farm labor contractor's license with the
36 indorsement required by ORS 658.417 (1). The Bureau of Labor and Industries shall make rules for
37 the issuance of duplicate licenses in the event of the loss or destruction of original licenses.

38 (2) Labor contractor licenses may be issued by the commissioner only as follows:

39 (a) To a natural person operating as a sole proprietor under the person's own name or under
40 an assumed business name registered with the Office of Secretary of State.

41 (b) To two or more natural persons operating as a partnership or as a limited liability partner-
42 ship under their own names or under an assumed business name registered with the Office of Sec-
43 retary of State.

44 (c) Except as provided in subsection (3) of this section, to the majority shareholder or majority
45 shareholders of a corporation or a limited liability company that is licensed to operate as a labor

1 contractor.

2 (d) Except as provided in subsection (3) of this section, to a corporation or a limited liability
3 company whose majority shareholder or majority shareholders are also licensed to operate as a la-
4 bor contractor and that is authorized to do business in Oregon by the Office of Secretary of State.

5 (e) To a cooperative corporation authorized to do business in Oregon by the Office of Secretary
6 of State.

7 (f) To a private nonprofit corporation authorized to do business in Oregon by the Office of Sec-
8 retary of State and designated by the Internal Revenue Service as exempt under section 501(c)(3)
9 of the Internal Revenue Code, provided:

10 (A)(i) The purpose of the corporation is to provide education or training; and

11 (ii) Workers recruited, solicited, supplied or employed by the corporation are recruited, solicited,
12 supplied or employed only for the purpose of educating or training the workers in construction, in
13 the forestation or reforestation of lands or in the production or harvesting of farm products; or

14 (B) For at least five years before the corporation files an application for a labor contractor li-
15 cense, the corporation has been:

16 (i) Authorized to do business in Oregon by the Office of Secretary of State;

17 (ii) Primarily engaged in recruiting, soliciting, supplying or employing workers; and

18 (iii) Designated by the Internal Revenue Service as exempt under section 501(c)(3) of the Inter-
19 nal Revenue Code.

20 (g) For a farm labor contractor license only, to an agricultural association that is authorized to
21 do business in Oregon by the Office of Secretary of State.

22 **(h) For a property services contractor license only:**

23 **(A) To any of the business entities described in paragraphs (b) to (f) of this subsection,**
24 **provided that each entity includes with the application for a license under ORS 658.415 the**
25 **names and addresses of one or more individuals who are responsible, financially and other-**
26 **wise, for fulfilling the entity's obligations consistent with the provisions of ORS 658.405 to**
27 **658.503.**

28 **(B) To a private nonprofit corporation authorized to do business in Oregon by the Office**
29 **of Secretary of State and designated by the Internal Revenue Service as exempt under sec-**
30 **tion 501(c)(3) of the Internal Revenue Code provided that the corporation is primarily en-**
31 **gaged in recruiting, soliciting, supplying or employing workers.**

32 (3) The majority shareholder or majority shareholders of a corporation or limited liability com-
33 pany are not required to be licensed under this section if the corporation or limited liability com-
34 pany:

35 (a)(A) Publicly trades its shares of stock on a stock exchange regulated by the United States
36 Securities and Exchange Commission; or

37 (B) Has 10 or more shareholders and demonstrates to the satisfaction of the commissioner that
38 the corporation or limited liability company is adequately capitalized; and

39 (b) Is authorized to do business in Oregon by the Office of Secretary of State.

40 **SECTION 3.** ORS 658.411 is amended to read:

41 658.411. (1) An employee of a labor contractor who is licensed under ORS 658.405 to 658.503
42 may be licensed as a labor contractor subject to an employee indorsement if the employee contin-
43 uously meets all of the following conditions:

44 (a) The employee's employer has filed with the Commissioner of the Bureau of Labor and In-
45 dustries a signed statement, in a form required by the commissioner, agreeing to sponsor the appli-

1 cation and to notify the commissioner promptly upon termination of the employment of the employee;

2 (b) The employee engages in activities that would require licensing as a labor contractor solely
3 on behalf of the employer;

4 (c) The employee does not personally employ any workers and is not responsible for paying any
5 workers;

6 (d) The employer maintains proof of financial responsibility;

7 (e) The employer's license remains in good standing; and

8 (f) The employee meets all of the conditions for licensing as a labor contractor, except as pro-
9 vided in this section.

10 (2) A labor contractor subject to an employee indorsement acting in compliance with subsection
11 (1) of this section need not:

12 (a) Provide proof of financial responsibility under ORS 658.415 (3).

13 (b) Comply with ORS 658.440 (1)(j).

14 (c) **Provide any of the following information that is of a personal nature if the labor**
15 **contractor subject to an employee indorsement is an employee of a property services con-**
16 **tractor:**

17 (A) **A social security number;**

18 (B) **A home address and telephone number;**

19 (C) **Personal financial information; and**

20 (D) **Personal income tax or property tax information.**

21 (3) The license of a labor contractor subject to an employee indorsement shall state the condi-
22 tions contained in subsection (1) of this section on its face and shall state that a labor contractor
23 subject to an employee indorsement who operates out of compliance with these restrictions is an
24 unlicensed labor contractor.

25 (4) A labor contractor who employs another labor contractor is personally, jointly and severally
26 liable for any damages, attorney fees or costs awarded against the employee for the actions of the
27 labor contractor employee undertaken within the scope of employment, or for actions of the em-
28 ployee that the employee takes under color of an employee's license subject to an employee in-
29 dorsement that are known, or reasonably should have been known, by the employer. In the case of
30 a labor contractor that is a corporation, both the corporation and the licensed majority shareholder
31 or shareholders are so liable.

32 **SECTION 4.** ORS 658.412 is amended to read:

33 658.412. (1) The Commissioner of the Bureau of Labor and Industries may not issue a license to
34 operate as a labor contractor until an applicant for a license has successfully passed a qualifying
35 examination designed to test the applicant's ability, knowledge and proficiency to conduct and
36 manage the business of a labor contractor. The examination must also test the applicant's knowledge
37 of an employer's responsibility to prevent sexual assault and sexual harassment. The commissioner
38 shall prescribe by rule the requirements for and the manner of testing the competency of license
39 applicants.

40 (2) **In prescribing requirements for testing applicants for a property services contractor**
41 **license, the commissioner may establish a process to administer the examination in-person,**
42 **through an online electronic medium or in any other manner as the commissioner may**
43 **specify.**

44 **SECTION 5.** ORS 658.415 is amended to read:

45 658.415. (1) A person may not act as a labor contractor unless the person has first been licensed

1 by the Commissioner of the Bureau of Labor and Industries under ORS 658.405 to 658.503. Any
2 person may file an application for a license to act as a labor contractor at any office of the Bureau
3 of Labor and Industries. The application shall be sworn to by the applicant and shall be written
4 on a form prescribed by the commissioner. The form shall include, but not be limited to, questions
5 asking:

6 (a) The applicant's name, Oregon address and all other temporary and permanent addresses the
7 applicant uses or knows will be used in the future.

8 (b) Information on all motor vehicles to be used by the applicant in operations as a labor con-
9 tractor including license number and state of licensure, vehicle number and the name and address
10 of vehicle owner for all vehicles used.

11 (c) Whether or not the applicant was ever denied a license under ORS 658.405 to 658.503 within
12 the preceding three years, or in this or any other jurisdiction had a labor contract license denied,
13 revoked or suspended within the preceding three years.

14 (d) The names and addresses of all persons financially interested, whether as partners, share-
15 holders, associates or profit-sharers, in the applicant's proposed operations as a labor contractor,
16 together with the amount of their respective interests, and whether or not, to the best of the
17 applicant's knowledge, any of these persons was ever denied a license under ORS 658.405 to 658.503
18 within the preceding three years, or had a labor contractor license denied, revoked or suspended
19 within the preceding three years in this or any other jurisdiction.

20 (2) Each applicant shall furnish satisfactory proof with the application **of the existence of:**

21 (a) *[Of the existence of]* A policy of insurance in an amount adequate under rules issued by the
22 commissioner for vehicles to be used to transport workers. *[For the purpose of this paragraph, the*
23 *certificate of an insurance producer licensed in Oregon is]* Satisfactory proof of adequate
24 insurance[.] **includes:**

25 **(A) The certificate of an insurance producer licensed in Oregon.**

26 **(B) For property services contractors only, documentation that provides the insurance**
27 **policy number, the amount of coverage under the policy and the name of the insurance**
28 **producer.**

29 (b) *[Of the existence of]* Workers' compensation insurance as provided in ORS 658.440 (1)(j). The
30 commissioner may adopt rules concerning satisfactory proof of adequate workers' compensation in-
31 surance.

32 (3) Except as provided in subsection (6) of this section, each applicant shall submit with the
33 application and shall continually maintain thereafter, until excused, proof of financial ability to
34 promptly pay the wages of employees and other obligations specified in this section. The proof re-
35 quired in this subsection shall be in the form of a corporate surety bond of a company licensed to
36 do such business in Oregon, a cash deposit or a deposit the equivalent of cash. For the purposes of
37 this subsection, it shall be deemed sufficient compliance if the labor contractor procures a savings
38 account at a bank or savings and loan institution in the name of the commissioner as trustee for the
39 employees of the labor contractor and others as their interests may appear and delivers proof of the
40 account and the ability to withdraw the funds to the commissioner under the terms of a bond ap-
41 proved by the commissioner. The amount of the bond and the security behind the bond, or the cash
42 deposit, shall be based on the maximum number of employees the labor contractor employs at any
43 time during the year. The bond or cash deposit shall be:

44 (a) \$10,000 if the labor contractor employs no more than 20 employees; or

45 (b) \$30,000, or such lesser sum as may be authorized by the commissioner under ORS 658.416,

1 if the labor contractor employs 21 or more employees.

2 (4) In the event that a single business entity licensed as a labor contractor has more than one
3 natural person who, as an owner or employee of the business entity, engages in activities that re-
4 quire the persons to be licensed individually as labor contractors, and each person engages in those
5 activities solely for that business entity, the commissioner may provide by rule for lower aggregate
6 bonding requirements for the business entity and its owners and employees. If there is an unsatisfied
7 judgment of a court or final decision of an administrative agency against a license applicant, the
8 subject of which is any matter that would be covered by the bond or deposit referred to in sub-
9 section (3) of this section, the commissioner may not issue a license to the applicant until the
10 judgment or decision is satisfied. As a condition of licensing any such applicant, the commissioner
11 may require the applicant to submit proof of financial ability required by subsection (3) of this sec-
12 tion in an amount up to three times that ordinarily required of a license applicant.

13 (5) All corporate surety bonds filed under this section or ORS 658.419 shall be executed to cover
14 liability for the period for which the license is issued. During the period for which it is executed,
15 the bond may not be canceled or otherwise terminated.

16 (6) A property services contractor is not required to file proof of financial ability under sub-
17 section (3) of this section if:

18 (a) The property services contractor provides proof of general liability insurance coverage in
19 an amount that the commissioner determines by rule is adequate; and

20 (b) The commissioner finds that the property services contractor, within the preceding two
21 years, has not:

22 (A) Violated ORS chapter 652 or 653; or

23 (B) Committed an unlawful employment practice under ORS chapter 659A.

24 (7) Each application must be accompanied by the fee established under ORS 658.413.

25 (8) Any person who uses the services of a labor contractor who has failed to comply with any
26 of the provisions of this section or ORS 658.419 shall:

27 (a) Be personally and jointly and severally liable to any employee as far as the employee has
28 not been paid wages in full for the work done for that person.

29 (b) Be personally liable for all penalty wages that have occurred under ORS 652.150 for the
30 wages due under this section.

31 (9) Any person who suffers any loss of wages from the employer of the person or any other loss
32 specified in subsection (17) of this section shall have a right of action in the name of the person
33 against the surety upon the bond or against the deposit with the commissioner. The right of action:

34 (a) Is assignable and must be included with an assignment of a wage claim, of any other appro-
35 priate claim or of a judgment thereon.

36 (b) May not be included in any action against the labor contractor but must be exercised inde-
37 pendently after first procuring a judgment or other form of adequate proof of liability established
38 by rule and procedure under subsection (15) of this section establishing the labor contractor's li-
39 ability for the claim.

40 (10)(a) The surety company or the commissioner shall make prompt and periodic payments on
41 the labor contractor's liability up to the extent of the total sum of the bond or deposit.

42 (b) Payment shall be made based upon priority of wage claims over advances made by the con-
43 struction property owner, the grower or producer of agricultural commodities or the owner or lessee
44 of land intended to be used for the production of timber, for advances made to or on behalf of the
45 labor contractor.

1 (c) Payment shall be made in full of all sums due to each person who presents adequate proof
2 of the claim.

3 (d) Payment shall be made in part if there are insufficient funds to pay in full the person next
4 entitled to payment in full.

5 (11) A person may not bring any action against the surety company or the commissioner on the
6 bond or against the commissioner as the trustee for the beneficiaries of the labor contractor under
7 any deposit made pursuant to this section or ORS 658.419 unless the person has first exhausted the
8 procedures contained in subsections (9) and (13) of this section or in ORS 658.419 and contends that
9 the surety company or the commissioner still has funds that are applicable to the person's judgment
10 or acknowledgment.

11 (12) The commissioner may not be prevented from accepting assignments of wage claims and
12 enforcing liability against the surety on the bond or from applying the deposit to just wage claims
13 filed with the commissioner.

14 (13) All claims against the bond or deposit shall be unenforceable unless request for payment
15 of a judgment or other form of adequate proof of liability or a notice of the claim has been made
16 by certified mail to the surety or the commissioner within six months from the end of the period for
17 which the bond or deposit was executed and made.

18 (14) If the commissioner has received no notice as provided in subsection (13) of this section
19 within six months after a labor contractor is no longer required to provide and maintain a surety
20 bond or deposit, the commissioner shall terminate and surrender any bond or any deposit under the
21 control of the commissioner to the person who is entitled thereto upon receiving appropriate proof
22 of such entitlement.

23 (15) The commissioner shall adopt rules reasonably necessary for administration and enforce-
24 ment of the provisions of this section and ORS 658.419.

25 (16) Every labor contractor required by this section or ORS 658.419 to furnish a surety bond or
26 make a deposit in lieu of a surety bond shall keep conspicuously posted upon the premises where
27 employees working under the contractor are employed a notice, in both English and any other lan-
28 guage used by the labor contractor to communicate with workers, specifying the contractor's com-
29 pliance with the requirements of this section and ORS 658.419 and specifying the name and Oregon
30 address of the surety on the bond or a notice that a deposit in lieu of the bond has been made with
31 the commissioner together with the address of the commissioner.

32 (17) The bond or deposit referred to in subsection (3) of this section shall be payable to the
33 commissioner and shall be conditioned upon:

34 (a) Payment in full of all sums due on wage claims of employees.

35 (b) Payment by the labor contractor of all sums due to the construction property owner, the
36 grower or producer of agricultural commodities or the owner or lessee of land intended to be used
37 for the production of timber for advances made to or on behalf of the labor contractor.

38 (18) The commissioner may not issue a license until the applicant executes a written statement
39 that shall be subscribed and sworn to and that shall contain the following declaration:

40 _____
41
42 With regards to any action filed against me concerning my activities as a labor contractor, I
43 appoint the Commissioner of the Bureau of Labor and Industries as my lawful agent to accept ser-
44 vice of summons when I am not present in the jurisdiction in which such action is commenced or
45 have in any other way become unavailable to accept service.

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2
3 (19) A person who cosigns with a labor contractor for a bond required by subsection (3) of this
4 section or by ORS 658.419 is not personally or jointly and severally liable for unpaid wages above
5 the amount of the bond solely because the person cosigned for the bond.

6 (20) The court may award reasonable attorney fees to the prevailing party in any action to en-
7 force the provisions of this section or ORS 658.419.

8 **SECTION 6.** ORS 658.428 is amended to read:

9 658.428. (1) Rules adopted under ORS 658.427 shall require that a property services contractor
10 provide professional training through or approved by the Bureau of Labor and Industries to [*man-*
11 *agers, supervisors and*] employees **of the property services contractor who perform janitorial**
12 **services, and to employees who manage or supervise those employees, in order to:**

13 [(1)] (a) [*To*] Prevent sexual assault and sexual harassment in the workplace.

14 [(2)] (b) [*To*] Prevent discrimination in the workplace and promote cultural competency.

15 [(3)] (c) [*To*] Educate the workforce regarding protection for employees who report a violation
16 of a state or federal law, rule or regulation.

17 **(2) A property services contractor shall provide the training as follows:**

18 **(a) At least once during the year in which a property services contractor license is first**
19 **issued to a property services contractor;**

20 **(b) For new employees, within 90 days of the employee's initial hiring date; and**

21 **(c) At least once every two years after the renewal of a license.**

22 **SECTION 7.** ORS 658.440 is amended to read:

23 658.440. (1) Each person acting as a labor contractor shall:

24 (a) Carry a labor contractor's license at all times and exhibit it upon request to any person with
25 whom the labor contractor intends to deal in the capacity of a labor contractor.

26 (b) File immediately at the United States post office serving the labor contractor's address, as
27 noted on the face of the license, a correct change of address if the labor contractor permanently
28 changes address, and notify the Commissioner of the Bureau of Labor and Industries each time an
29 address change is made.

30 (c) Pay or distribute promptly, when due, to the individuals entitled thereto all money or other
31 things of value entrusted to the labor contractor by any person for that purpose.

32 (d) Comply with the terms and provisions of all legal and valid agreements or contracts entered
33 into in the labor contractor's capacity as a labor contractor.

34 (e) File with the Bureau of Labor and Industries, as required by rule, information relating to
35 work agreements between the labor contractor and construction property owners or farmers and
36 between the labor contractor and workers or information concerning changes in the circumstances
37 under which the license was issued.

38 (f) Furnish to each worker, at the time of hiring, recruiting, soliciting or supplying, whichever
39 occurs first, a written statement in the English language and any other language used by the labor
40 contractor to communicate with the workers that contains a description of:

41 (A) The method of computing the rate of compensation.

42 (B) The terms and conditions of any bonus offered, including the manner of determining when
43 the bonus is earned.

44 (C) The terms and conditions of any loan made to the worker.

45 (D) The conditions of any housing, health and child care services to be provided.

1 (E) The terms and conditions of employment, including the approximate length of season or pe-
2 riod of employment and the approximate starting and ending dates thereof.

3 (F) The terms and conditions under which the worker is furnished clothing or equipment.

4 (G) The name and address of the owner of all operations where the worker will be working as
5 a result of being recruited, solicited, supplied or employed by the labor contractor.

6 (H) The existence of a labor dispute at the worksite.

7 (I) The worker's rights and remedies under ORS chapters 654 and 656, ORS 658.405 to 658.503,
8 the Service Contract Act (41 U.S.C. 351-401) and any other such law specified by the Commissioner
9 of the Bureau of Labor and Industries, in plain and simple language in a form specified by the
10 commissioner.

11 (g) At the time of hiring and prior to the worker performing any work for the labor contractor,
12 execute a written agreement between the worker and the labor contractor containing the terms and
13 conditions described in paragraph (f)(A) to (I) of this subsection. The written agreement shall be in
14 the English language and any other language used by the labor contractor to communicate with the
15 workers.

16 (h) Furnish to the worker, each time the worker receives a compensation payment from the la-
17 bor contractor, a written statement itemizing the total payment and amount and purpose of each
18 deduction therefrom, hours worked and rate of pay or rate of pay and pieces done if the work is
19 done on a piece rate basis, and if the work is done under the Service Contract Act (41 U.S.C.
20 351-401) or related federal or state law, a written statement of any applicable prevailing wage.

21 (i) **Except for a person acting as a property services contractor**, provide to the commis-
22 sioner a certified true copy of all payroll records for work done as a labor contractor when the
23 contractor pays employees directly. The records shall be submitted in such form and at such times
24 and shall contain such information as the commissioner, by rule, may prescribe.

25 (j)(A) If the person is a farm labor contractor engaged in the forestation or reforestation of
26 lands, provide workers' compensation insurance for each individual who performs manual labor in
27 forestation or reforestation activities regardless of the business form of the contractor and regard-
28 less of any contractual relationship that may be alleged to exist between the contractor and the
29 workers notwithstanding ORS 656.027, unless workers' compensation insurance is otherwise pro-
30 vided; or

31 (B) If the person is a farm labor contractor but is not engaged in the forestation or reforestation
32 of lands, provide workers' compensation insurance to the extent required under ORS chapter 656,
33 unless workers' compensation insurance is otherwise provided.

34 **(k) If the person is a property services contractor, provide time and pay records, as de-**
35 **defined in ORS 652.750, to the commissioner or an employee of the property services contractor**
36 **who requests the records, no later than 45 days after receipt of the request. A property**
37 **services contractor that fails to comply with the requirements of this paragraph is subject**
38 **to civil penalty under ORS 652.900.**

39 (2) If the labor contractor:

40 (a) Employs workers, the labor contractor shall substantially comply with the provisions of ORS
41 654.174 relating to field sanitation, and its implementing rules as adopted by the Department of
42 Consumer and Business Services.

43 (b) Owns or controls housing furnished to workers in connection with the recruitment or em-
44 ployment of workers, the labor contractor shall ensure that the housing substantially complies with
45 any applicable law relating to the health, safety or habitability of the housing.

1 (c) Recruits or solicits any worker to travel from one place to another for the purpose of
2 working at a time prior to the availability of the employment, the labor contractor shall furnish to
3 the worker, at no charge, lodging and an adequate supply of food until employment begins, in com-
4 pliance with rules adopted by the Bureau of Labor and Industries. If employment does not begin
5 within 30 days from the date the labor contractor represented employment would become available,
6 the labor contractor shall refund to the worker all sums paid by the worker to the labor contractor
7 and provide the worker, in cash or other form of payment authorized by ORS 652.110, the costs of
8 transportation, including meals and lodging in transit, to return the worker to the place from which
9 the worker was induced to travel or the costs of transportation, including meals and lodging in
10 transit, to another worksite selected by the worker, whichever is less. For the purposes of this
11 paragraph, "recruits or solicits" does not include the mere provision of housing or employment to
12 persons who have not otherwise been recruited or solicited by the labor contractor or an agent of
13 the labor contractor prior to their arrival at the place of housing or employment. Workers who ar-
14 rive at the place of employment prior to the date they were instructed by the labor contractor to
15 arrive are not entitled to the benefits of this subsection until the date they were instructed to ar-
16 rive.

17 (3) A person acting as a labor contractor, or applying for a license to act as a labor contractor,
18 may not:

19 (a) Make any misrepresentation, false statement or willful concealment in the application for a
20 license.

21 (b) Willfully make or cause to be made to any person any false, fraudulent or misleading repre-
22 sentation, or publish or circulate any false, fraudulent or misleading information concerning the
23 terms, condition or existence of employment at any place or by any person.

24 (c) Solicit or induce, or cause to be solicited or induced, the violation of an existing contract
25 of employment.

26 (d) Knowingly employ an alien not legally present or legally employable in the United States.

27 (e) Assist an unlicensed person to act in violation of ORS 658.405 to 658.503.

28 (f) By force, intimidation or threat of procuring dismissal or deportation or by any other manner
29 whatsoever, induce any worker employed or in a subcontracting relationship to the labor contractor
30 to give up any part of the compensation to which the worker is entitled under the contract of em-
31 ployment or under federal or state wage laws.

32 (g) Solicit or induce, or cause to be solicited or induced, the travel of a worker from one place
33 to another by representing to a worker that employment for the worker is available at the destina-
34 tion when employment for the worker is not available within 30 days after the date the work was
35 represented as being available.

36 **SECTION 8.** ORS 658.501 is amended to read:

37 658.501. (1) ORS 658.405 to 658.503 apply to all transactions, acts and omissions of labor con-
38 tractors and users of labor contractors that are within the constitutional power of the state to
39 regulate, and not preempted by federal law, including but not limited to the recruitment of workers
40 in this state to perform work outside this state, the recruitment of workers outside of this state to
41 perform work in whole or in part within this state, the housing of workers in this state for work in
42 another state, the housing of workers from another state in connection with work to be performed
43 in this state, the transportation of workers through this state and the payment, terms and condi-
44 tions, disclosure and record keeping required with respect to work performed outside this state by
45 workers recruited in this state.

1 **(2) The provisions of ORS 658.405 to 658.503 apply only to labor contractors and employees**
2 **of labor contractors who perform those services for which a labor contractor license is re-**
3 **quired.**

4 **SECTION 9.** **A civil action under ORS 658.453 (4) or 658.475 may be commenced against**
5 **a property services contractor on or after July 1, 2018.**

6 **SECTION 10.** **Section 9 of this 2018 Act and ORS 658.511 are added to and made a part**
7 **of ORS 658.405 to 658.503.**

8 **SECTION 11.** **This 2018 Act being necessary for the immediate preservation of the public**
9 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**
10 **on its passage.**

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